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EXAMINER

FORD, JOHN K

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3743

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Please find below and/or attached an Office communication concerning this application or proceeding.

*Examiner's Answer.*



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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

Paper No. 32

Application Number: 09/121,702

Filing Date: July 24, 1998

Appellant(s): Oliver Beck et al.

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Richard L. Schwaab

For Appellant

EXAMINER'S ANSWER

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This is in response to the appeal brief filed April 25, 2002.

**(1) Real Party in Interest**

A statement identifying the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

**(3) Status of Claims**

The statement of the status of the claims contained in the brief is correct.

This appeal involves claims 1, 4-7, 9 and 11-14.

Claims 15-17 are withdrawn from consideration as not directed to the elected species or elected invention.

Claims 2, 3, 8 and 10 have been canceled.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

Appellant correctly notes that the declaration by Mr. Hans Kampf (received August 13, 2002, attached to Paper No. 25) has

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been considered by the Examiner and forms part of the record before the Board of Appeals.

**(5) *Summary of Invention***

The summary of invention contained in the brief is deficient because it attempts to color the reader's perception as to the ultimate issue under 35 USC 112, first paragraph, by repeatedly stating, as if it were fact, that the original disclosure supports claims drawn to both temperature and volume control. This erroneous statement of fact occurs twice in the first paragraph and once in the last paragraph of the Summary of Invention section. Arguments should be reserved for the arguments section of the Brief.

Moreover, the first paragraph of the Summary discusses "countervailing design issues" and "another recognized problem". While these certainly are design issues and a "problem", there is no objective evidence (e.g. test results) to support a factual finding that this assemblage of components achieves more uniform mixing than the prior art or solves any purported "problem" of non-uniform temperature profiles exiting the vents into the automobile compartment. None of the claims have, in the Examiner's opinion, any limitation that provides a reasonable nexus between any of these design tradeoffs or "problem" and some allegedly patentable feature of this device. It is extremely broadly claimed with virtually no limiting

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dimensions or limitations as to any degree of compactness or any particular value of temperature non-uniformity. Moreover, Appellants has no proof of any because they have not undertaken, for the record here, any testing of their own device or what the prior art discloses teaches or suggests. The arguments in the Summary section are speculative at best and, besides these failings, do not belong in this section of the Brief. They are arguments not facts.

**(6) Issues**

The appellant's statement of the issues in the brief is substantially correct.

The changes are as follows: Issue (7) should be treated first (i.e. should be Issue (1) as it was presented in the final rejection). If the Board agrees with the Examiner, as to Issue (7), the remainder of the issues may be moot as to all of the claims, except claim 12.

**(7) Grouping of Claims**

Appellant's brief includes a statement that claims 4, 5, 6, 12, 13 and 14 do not stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

The Board's attention is directed to the last four paragraphs of the Argument sections of the Brief where the patentability of claims 13, 14 and 5 are superficially "argued" to be different. It is the Examiner's opinion that, as to these

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claims, no separate substantive argument has been addressed. Stating that these claims claim additional structure is not a substantive argument in this Examiner's opinion because it states no reasons why any additional structure defines an invention over the prior art. Because of differences of opinion on what may constitute an "argument", sufficient to satisfy the Rule, Examiner has chosen to give Appellant the benefit of any doubt on the matter by concluding 37 CFR 1.192(c)(7)-(8) have been met. Nonetheless, it is the Board's opinion on the substance of those arguments which ultimately will determine their persuasive value, not the (in)formality of their presentation.

**(8) Claims Appealed**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(9) Prior Art of Record**

The following is a listing of the prior art of record relied upon in the rejection of claims under appeal.

|           |                  |        |
|-----------|------------------|--------|
| 5,775,407 | INOUE            | 7-1998 |
| 3,967,779 | LOGSDON          | 7-1976 |
| 3,881,546 | OTSUKA, ET AL.   | 5-1975 |
| 4,607,565 | SUGAWARA, ET AL. | 8-1986 |
| 4,263,842 | MOORE            | 4-1981 |
| 5,505,251 | SARBACH          | 4-1996 |

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|              |                  |         |
|--------------|------------------|---------|
| JA-58-136813 | HAGIWARA, ET AL. | 9-1987  |
| JA-58-122213 | EGAWA            | 7-1983  |
| DT 3514359   | KAMPF, ET AL.    | 10-1986 |
| DE 3940361   | GEIGER           | 6-1991  |

**(10) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1, 4-7, 9, 11, 13 and 14 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

In the Examiner's opinion this is the most important issue in this application because not only are Appellant's rights in the subject matter being determined but, as well, the rights of others who came after Appellant, who appear to have developed technology to permit independent temperature and volumetric air flow control.

It remains the Examiner's steadfast belief, unshaken by any of appellant's comments or by the Rule '132 declaration by Mr. Kampf (attached to Paper No. 25), that appellant described a relatively simple four zone mixing box to permit four independently derived temperatures to be produced by varying the

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proportions of cold air and heated air diverted into the cold air bypass and through the heater core, respectively.

Appellant's did not describe any individualized control of the volumetric air flow into the individual zones as part of the invention. The specification and drawings are simply devoid of any suggestion, teaching or even a hint that individualized air volume control formed any part of this invention.

These limitations regarding air-volume control entered the prosecution at the late stages and are believed to be the product of an industrious patent claim writer and not the product of what the specification and drawings, as originally filed, fairly support.

Claims 1 and 13 state that both quantity and the temperature of the air fed to the four zones can be independently controlled. On this last claim limitation, the Examiner does not see any descriptive support in the originally filed specification and claims to support an explicit limitation that the quantity of air fed to any one of each of the four independent zones can be controlled independently of the quantity of air fed to any other of the four independent zones.

The specification, in its most detailed description of the control of the invention (found on page 6, lines 10-14) states that the air temperature in each mixing space "can be adjusted separately, with the result that different temperature-



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controlled air can be fed to four air-conditioning zones." There is no description to support a claim encompassing independent control of the quantity of air fed to each zone as claimed in claim 1 and 13 and argued in Paper No. 18, page 7, first paragraph, and repeatedly throughout the Brief to be a characteristic which distinguishes Applicant's claimed subject matter from that of the prior art. At best, Appellant's disclosure only discloses that the proportion of hot and cold air fed to each mixing chamber can be varied to independently control the temperature in each zone.

Simultaneously controlling both the temperature of the air and the volume of the air delivered to each zone would require sophisticated and independent variation of the both the hot and cold air dampers for any particular zone (not taught by Appellant's specification), such as closing both simultaneously to, for example, reduce delivery volume to a particular zone (and not just to effect an inverse variation of their respective openings to effect temperature variation without volume control as taught by Appellant's specification in each zone), as well as to calculate the effect such a diminution of volume flow to one particular zone would have on increasing the volume flow to the remaining three zones (and, in turn, compensating their positions their hot and cold damper positions to restrain increased volume flow there). The limitation in claim 1 that

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"both the quantity and temperature of the air fed to each of the four associated heating/air-conditioning zones is independently controllable with respect to each other zone" is not supported by the disclosure as originally filed. Nor is descriptive support for this subject matter found in the translation of the priority document (197 31 908.4) received September 5, 2000.

On page 8 of the Brief (section III.) Appellant argues that the entire written description and drawings must be considered in making this evaluation. The Examiner agrees. That much is hornbook law. In response to that "total" evaluation there is no reasonable basis to assert independent quantity control to each zone was ever originally described.

Appellant's return to the Rule '132 declaration by Mr. Kampf is a disturbing development for this Appeal. The Examiner has already pointed out that Mr. Kampf has misquoted key portions of the specification in a way that makes them appear far broader in terms of describing the invention than they actually are. Mr. Kampf quotes portions of the specification in his affidavit without informing the reader that he has omitted from the quotation relevant clauses that give the phrases entirely different meanings and has inserted punctuation to make the quotes appear complete.

It is simply beyond the pale, for counsel to attempt to continue to support an argument with such a misleading quote of

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the specification. No orderly and proper appeal can take place where an Appellant is permitted to rewrite quotations without informing the reader as to the subject matter he has omitted.

Shamelessly, in the Examiner's opinion, on page 9 of the Brief, Mr. Kampf's two glaring misquotations are reproduced even though counsel already knows from the Examiner's prior criticism that these quotations are misleading due to the omitted words and added punctuation so as to make the partial quotes appear complete. The proper quotes are shown below:

For example, the disclosure on pages 4-6 of the original application describes the preferred embodiment in detail. Beginning on line 15 of page 4, it states that "each of the four cold-air ducts then obtained opens out in each case into one mixing space (50, 52, 54, 56)." Beginning at line 32 of that page, it is stated that, if "each mixing space is assigned at least two of the air-stream control elements, of which one is provided as a cold-air flap in the cold-air duct and a second is designed as a warm-air control element arranged directly on the outlet side of the heater, it is possible for the cold-air stream and the ~~warm-air stream to be regulated~~ separately from one another." At lines 18-19 of page 5 it is also noted that "each mixing space can also be fed cold air in a separately adjustable manner." The following disclosure through page 6 makes it clear that the cold air ducts can be "closed off" (page 6, line 22) with air flaps 30 and 32, and also that the warm-air control elements, i.e., lamellae 44, in their closed position, "cover" (page 6, line 29) one of the respective sub-regions of the heater 18.

missing language

In order that

this permitting  
optimal  
temperature  
regulation  
of the  
air in the  
respective  
mixing  
space

each of the two cold-air ducts is  
divided in two

Not only are the quotes incomplete, but punctuation has been placed in a such a manner as if to make them appear to be complete.

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At the bottom of page 9 of the Brief Appellant calls the Examiner's attention to page 6, lines 12-14 of the specification where again it states that the invention achieves "different temperature-controlled air" with no mention of volume control. No disclosure to support independent volume control exists in the original disclosure. At every description in the specification that Appellant can point to only temperature control by varying the proportions of hot and cold air is disclosed. It is clearly "new matter" to recite in the claims independent volume control when it was not part of the originally described invention.

The Abstract of the disclosure mentions temperature controlled air twice (Abstract, lines 1-3 and 3-5). The "Field of Invention" mentions temperature controlled air once (specification, page 1, lines 5-7). The Description of related art describes temperature-controlled air (specification, page 1, line 17). The Summary of the Invention describes "temperature-controlled air" (specification, page 2, line 25, page 3, lines 5-6). The detailed description discusses temperature control numerous times (specification, page 4, lines 1-3, page 4, line 32-page 5, line 4, page 6, line 31-page 7, line 2). At its most detailed portion the specification states:

"All the flaps, that is to say the four warm-air control elements and the four cold-air flaps, can be activated

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separately via a control unit. This means that the air temperature in each mixing space can be adjusted separately, with the result that different temperature-controlled air can be fed to four air-conditioning zones" (specification page 7, lines 10-14, emphasis supplied).

Temperature controlled air is mentioned a final time on page 7, line 25.

Significantly, Appellant describes no air volume control anywhere in the specification, Abstract or original claims or the original drawings. By contrast, air temperature control is described at least ten times without mention of any control over air volume. The record overwhelmingly supports the Examiner's conclusion and the Board should sustain it.

There has been significant activity in Europe in these four zone systems as publications (not for record here, because they are not prior art) in the various patent offices worldwide reveals and some of those later developed systems may have the capability to independently control volume and temperature simultaneously. This system does not.

On page 10 of the Brief, counsel in the underlined section of the third paragraph seems entirely unapologetic about Mr. Kampf's misquoting the specification and punctuating the partial quotes as if they accurately reflected a complete quote. The Examiner caught the misquotations by accident and it is not

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believed that it is general practice in most courts to permit the parties to quote partial statements without alerting the reader by suitable punctuation to the fact that the quotation is incomplete or taken out of context. It is certainly evident that Appellant did nothing to alert the Examiner to the partial quotes at the time that he made them and that if it weren't for an exceptional alertness of the Examiner, or in the present case a bit of serendipity, the error would have gone unnoticed and the wrong conclusion (the one Mr. Kampf was pushing for) would have been reached.

The criticism of the Kampf '132 declaration as portraying inaccurate facts derived from partial quotations punctuated to appear complete is, in the Examiner's opinion, extremely appropriate, counsel's remarks to the contrary notwithstanding.

The Board and the Examiner are entitled to have accurate quotes, accurate claim reproductions, accurate inventorship entities etc. The Examiner should not have had to discover for himself that quoted material from the specification was incomplete but presented in a way which made it appear complete and misleading. The Examiner makes no judgment as to any "intention," because it is not in the Examiner's jurisdiction (see MPEP 2010).

Claims 1 and 7 are rejected over JA 58-136813 in view of Inoue or Egawa under 35 U.S.C. 103(a). This rejection is set

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forth in prior Office Action, Paper No. 23, page 6, beginning at line 1.

Claims 1 and 7 are rejected over JA 58-136813 in view of Inoue or Egawa, as applied to claims 1 and 7 above, and further in view of DT '359 or DE '361 under 35 U.S.C. 103(a). This rejection is set forth in prior Office Action, Paper No. 23, page 7, beginning at line 14.

Claims 1 and 7 are rejected over the combined teachings of DT '359 and JA '813 under 35 U.S.C. 103(a). This rejection is set forth in prior Office Action, Paper No. 23, page 8, beginning at line 6.

Claims 4-6 and 12-14 are rejected over any of the prior art as applied against claim 1 above, and further in view of Otsuka or Logston under 35 U.S.C. 103 (a). This rejection is set forth in prior Office Action, Paper No. 23, page 10, beginning at line 1.

Claim 5 is rejected over any of the prior art as applied against claim 1 above, and further in view of Sugawara et al. or Moore under 35 U.S.C. 103 (a). This rejection is set forth in prior Office Action, Paper No. 23, page 10, beginning at line 17.

Claims 7, 9 and 11 are rejected over any of the prior art as applied against claim 1 above, and further in view of Sarbach

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under 35 U.S.C. 103(a). This rejection is set forth in prior Office Action, Paper No. 23, page 11, beginning at line 3.

**(11) Response to Argument**

With respect to section 2143.03 of the MPEP discussed on page 5 of the Brief, the Examiner is under no obligation to search for and reject limitations in the claims that appellant is not entitled to claim because his specification does not provide descriptive support under 35 U.S.C. 112, first paragraph. The Examiner should be sustained on the 35 U.S.C. 112, first paragraph rejection and on the art rejections to the extent that the Board is willing to treat the "whereby" clauses in claims 1 and 13 as non-limiting based on Appellant's failure to have descriptive support for independent volume and temperature control.

If the Board agrees that these limitations (i.e. temperature and air quantity independently controlled) are limiting particularly given Appellant's arguments that they are (Brief, page 5, first paragraph), the lack of description-of-the-invention rejection under 35 USC 112, first paragraph, as to claims 1, 4-7, 9, 11, 13 and 14 should be sustained, and the rejections under 35 U.S.C. 103 as to claims 1, 4-7, 9, 11, 13 and 14 would be moot.

Appellant can not distinguish his invention on independent temperature and air quantity control because he has not taught



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the latter function in his originally filed disclosure for the reasons stated in the final rejection and in this Examiner's Answer.

Counsel's insistence that the Examiner search for what Appellant has failed to disclose is nonsense. How is the Examiner supposed to search for independent temperature and volume control when Appellants have not disclosed how they do this? Precisely what is it that the Examiner is supposed to look for in the absence of any disclosure in Appellants' specification, drawings and original claims with which to compare it? Such an expectation that the Examiner simply go out and perform an unguided search without any understanding of how Appellants propose to independently control temperature and air flow volume cannot be reconciled with simple common sense.

Appellant suggests (Brief, page 5, second paragraph) the Examiner's prior art does not achieve uniform temperatures at the discharge. There is not a scintilla of factual evidence to support these arguments. It is all overwhelmingly self-serving. The "problem of non-uniform temperatures in the air streams exiting from the heating/air-conditioning vents" is discussed speculatively in the specification (i.e. no evidence of testing) relative to DE 3940361, USP 5,016,704 and DE 4422120, but Appellants have submitted no proof that it exists in the prior art relied upon by the Examiner. Given the similarity of JP 58-

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136813 (Figure 3) to the present invention, the Examiner doubts that Appellants could provide such a proof.

Regarding page 6, "Background", Appellant's incorrectly assert that the prior art on pages 1 and 2 of the specification disclose controlling both temperature and volume of air to each zone. That description makes no reference to volume control.

Behr competes with other automotive suppliers such as Valeo, Calsonic, Denso and domestic U.S. producers as well. Appellants are incorrect when they assert that market forces to produce compact 4-zone systems did not exist at the time of this invention. How can Appellant explain the proliferation of 4-zone systems filed in the various patent offices around the world at or near the time of their invention from their competitors? The argument that "compactness" was needed in 1989 and not in 1995 is not supported by the evidence. In fact in paragraph 5 of Mr. Kampf's '132 affidavit it simply states that the pressure to downsize has eased "relatively recently" (he doesn't state when or where, Europe, the United States or Japan?) But implicitly acknowledges that it still exists. Beyond that Mr. Kampf provides absolutely no facts to support his sweeping conclusions. Apparently, without such facts the fact finder is supposed to accept his speculation or opinion as fact. The Examiner does not find this opinion credible on the issue in the absence of any facts to support it. Even if such

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facts were of record it is hard to believe that Honda, currently making tiny cars like the "Insight" and the "Civic", that Mr. Kampf could possibly be correct in his conclusion as to all car models including the sub-compacts by all car makers the world over. Moreover, Mr. Kampf's conclusions are at odds with Denk USP 5,878,806 (col. 1, lines 54-60), of record, which discloses that in the mid-nineties compactness afforded by louvers was still a valued advantage in the automotive industry.

The Examiner's statement that the need for downsizing was greater at the time of filing this application than in the past is correct based on the facts, gross vehicular weight of the entire U.S. automobile fleet dropping over the last few decades based on the implementation of the CAFE (Corporate Average Fuel Economy). Since Mr. Kampf has produced no facts to support his conclusion of the opposite, the facts, such as they are, clearly support the Examiner's position. The facts are that DT 3,514,359 was concerned with downsizing (translation, page 5, line 19) but was also concerned with excessive expense and air flow resistance (translation, page 6, lines 4-7 and 15-19). Denk 5,878,806 is concerned with downsizing and expense. Denk demonstrates that the complex louver structure (USP 5,878,806, col. 1, lines 41-44) had been made much less complex to install by the use of frames to the point where in 1995 they were a viable and cost effective alternative to the simple flaps of DT

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3514359, thereby advantageously allowing for a reduction in size.

While counsel niggles over trifles, it would have been obvious to have used louvered flaps at the time the invention was made to satisfy an industry interest in downsized air conditioning systems, particularly as to smaller cars in the overall fleet mix.

At what exact time the desire for downsizing reached its peak in the industry is an irrelevant inquiry in this Examiner's opinion, but seems to be the only point Mr. Kampf takes issue with.

It is abundantly clear that the Examiner has produced obviousness rejections which answer to every structural limitation in the claim. The "whereby" clauses are not structure. See MPEP 2114 ("Apparatus claims cover what a device is, not what it does" (citations omitted)).

On page 12 and 13 under "The Incorrect Legal Standard" heading counsel makes an argument that is clearly contradicted by the facts in his possession. Specifically, DT 3514359 was designed to avoid the use of "relatively expensive structure" (translation page 6, lines 4-10) and obtain low air flow resistances. Both of these would, in effect, lead to larger systems that did not turn the flow abruptly. Counsel waxes eloquent in this section of the Brief without a shred of

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objective fact on which to base his conclusions. The Examiner believes one would have to be naive in this art to believe that in the mid-nineteen nineties they was no interest in downsizing automotive air conditioners as argued by counsel.

Similarly the notion advanced by counsel that invention is not spurred on or retarded by market conditions and market driven needs is similarly not credible.

**Claims 1, 7, 9 and 11**

On page 14 of the Brief Appellant argues JP 58-136813 in view of Inoue or JP 58-122213, by lumping the first two of the Examiner's rejections together. This not appropriate and has the effect of confusing the reader as to the Examiner's position. There is little to commend such an approach as it will more than likely confuse rather than illuminate. The Board is urged to read the Examiner's rejections as they were written.

The continued insistence that the Examiner produce prior art which needs to explicitly disclose a manner of operation which would permit simultaneous temperature and volume control when the Examiner has matched structure for structure (in the prior art) every claimed damper is hypocritical. Appellant doesn't teach, disclose or suggest in his own application how the various cold and hot air dampers/louvers 30, 32, 38 and 40

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(eight total) are controlled to produce the intended result of simultaneous volume and temperature control in 4 distinct zones. In the Examiner's rejections at least 8 dampers are taught which control temperature in 4 distinct zones. Beyond that, if Appellant is going to maintain that his 8 dampers are capable of simultaneous volume control and temperature control the Examiner relies on the same rationale (whatever it is) that the 8 dampers fairly taught by the prior art rejections fashioned by the Examiner are capable of the same. Unfortunately, counsel in his Brief and Mr. Kampf in his declaration have been unable to explain how the eight disclosed flow control devices (hot and cold air dampers/louvers) are able to produce the desired result of independent temperature and volume control. Instead, counsel's approach, to this glaring deficiency in his client's disclosure, is to bully the Examiner for not finding it. Again, the Examiner isn't sure what it is he should search for given the fact that neither counsel nor his client have been able to explain on the record how they accomplish simultaneous temperature and volume control in each of four zones.

If the Board feels that Appellant has met his burden under 35 U.S.C. 112, first paragraph, to describe in the disclosure an invention that achieves simultaneous temperature and volume control in each of four zones, then the Examiner's position is that the prior art fairly teaches the same in the same silent

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descriptive manner that Appellant relies on. It is respectfully submitted however that a more prudent approach for the Board to take would be to affirm the 35 USC 112, first paragraph rejection. Appellant is certainly free to drop the language from the independent claims that is unsupported by original disclosure in a continuation application after the Board's decision.

On page 16, beginning at line 10, Appellant argues the rejection of claims 1 and 7 based on the combined teachings of DE '359 and JP '813. Counsel doesn't apparently like the illustrations on page 9 of Paper No. 23 (the final office action) because of the relative ease with which the two references are combined to meet the subject matter of the claims.

Protests of "logically unsound" and "unmotivated combinations" preface a conclusion of hindsight (beforehand knowledge"). All of this is stated without any supporting analysis. JP '813 teaches 4 louver sets (20-23) controlling two hot air passages and two cold air passages in Modification I (at the top of page 9 of Paper No. 23) and DE '359 fairly teaches a total of 4 passages (24, 25, 26 and 27) formed by a horizontal partition 16 (Fig. 4 of DE '359) and a vertical partition 15 (Figs. 5 and 6 of DE '359). To have used the louver arrangements 20-23 and centrally mounted heater of JP '813 in

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place of the corresponding structure illustrated in Figures 5 and 6 of DE '359 is neither novel nor non-obvious. They perform the same function and the louvers of JP '813 advantageously take up less space (still a concern in 1995 as stated by the Examiner and evidenced by Denk 5,878,806 discussed previously and relied upon here to rebut Mr. Kampf's opinion evidence). Denk '806 is not a part of the substantive rejection, merely rebuttal evidence to what Mr. Kampf has stated and what counsel continues to argue relentlessly.

On evidence of "secondary considerations" (Brief, page 17, second full paragraph) Appellant has offered none. There has been no showing of "other events proved to have actually happened in the real world". There has been no showing of any secondary considerations at all.

#### **Claims 4-6 and 12-14**

With respect to the remainder of the references Appellant blinds himself to their respective teachings, returning once again (Brief, paragraph spanning pages 18-19) to the fact that the prior art in the Examiner's rejection(s) fairly teaches independent temperature control in each zone, but lacks any explicit teaching of independent air volume control in each zone. Since Appellants' specification, drawings and original



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claims all failed to disclose or describe how this independent temperature and volume control in each zone was done the Examiner was left with in reasonable way to search for it. Contrary to counsel's implicit assertion that an Examiner can search for anything that counsel wants to put into a claim, it is simply a false premise.

For example, rather than read Logsdon col. 2, lines 9-32 (as instructed by the Examiner) and comment on that, Appellant argues that it is not an automotive air mix louver. Does Appellant really believe the explanation of how a mixing damper set operates depends on whether it is disclosed to be mounted in an automobile? The Examiner, in the limited time allotted for examination, simply doesn't have the energy or interest to dispel arguments that fall so unreasonably below the level of one of ordinary skill in the art.

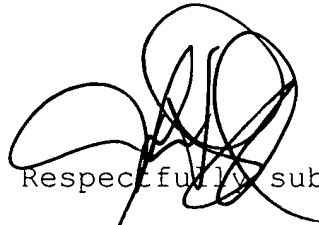
Regarding Otsuka the location of the fan upstream or downstream of the mixing louvers does not affect their operations. They mix air irrespective of fan location by directing the hot and cold streams toward each other.

The Examiner stands by every one of his rejections. They are sound. Appellant for his part has done little except argue without offering a supporting factual basis for his opinions, which opinions, at times, do not comport with common sense and

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the high level of skill evident in the patents issued in this technology.

For the above reasons, it is believed that the rejections should be sustained.



Respectfully submitted,  
John Ford

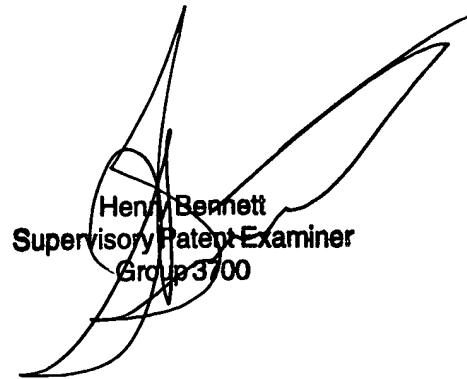
**John K. Ford**  
**Primary Examiner**

December 6, 2001

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